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CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

OTHER AUTHORITIES

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 76

ELLIOTT ASHTON WELSH, II,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

OPINION BELOW

The opinion of the Court of Appeals is reported (404 F.2d 1078). It also appears in the record [R. .....] and in the separately printed single Appendix. It was written by District Judge Powell. A dissenting opinion was written by Circuit Judge Hamley. No opinion was written by the district court.

JURISDICTION

The judgment of the Court of Appeals was entered on September 22, 1968. The time for filing this petition for writ of certiorari was extended to April 1, 1969 by Mr. Justice Douglas. The petition for writ of certiorari was filed within the extended time. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). See also Rules 37(b)(2) and 45(a), Federal Rules of Criminal Procedure. Title 18, Section 3231, United States Code, confers jurisdiction on the trial court.

STATUTES AND REGULATIONS INVOLVED

(Italics Supplied)

Section 1(c) of the Universal Military Training and Service Act (50 U.S.C. App. § 451 (c)) provides:

"The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is *fair and just*, and which is consistent with the maintenance of an effective national economy."—June 24, 1948, ch. 625, title I, § 1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, § 1(a), 65 Stat. 75.

Section 6(j) of the act (50 U.S.C. App. § 456(j)), 65 Stat. 75, 83, 86) provides:

"Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of *religious* training and belief, is conscientiously opposed to participation in war in any form. *Religious* training and belief in this connection means an individual's belief in a relation to a Supreme Being involv-

ing duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if

the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors."—50 U.S.C. App. § 456(j), 65 Stat. 75, 83, 86.

Section 1622.14 of the Selective Service Regulations (32 C.F.R. § 1622.14 (amended by E. O. 10420, 17 F. R. 11593, Dec. 19, 1952)) provides:

"*Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.*—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of *religious* training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant

and noncombatant training and service in the armed forces."

Section 1625.2 of the Selective Regulations (32 C.F.R. §1625.2 (E. O. 10292, 16 F. R. 9862, Sept. 28, 1951)) provides:

"*When registrant's classification may be reopened and considered anew.*—The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; *provided*, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 252), unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control."

Section 1626.25 of the Selective Service Regulations (32 C.F.R. § 1626.25 (E. O. 10363, 17 F. R. 5456, June 18, 1952)) provides:

"*Special provisions when appeal involves claim that registrant is a conscientious objector.*—(a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

"(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to combatant training and service in the armed forces, but not conscientiously opposed to noncombatant training and service in the armed forces, and the local board has classified the registrant in Class I-A-O, the appeal board shall proceed with the classification of the registrant. If, in such a case, the local board has classified the registrant in any class other than Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

"(2) If the registrant has claimed by reason of *religious* training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, and the local board has classified the registrant in Class I-O, the appeal board shall proceed with the classification of the registrant. If, in such a case, the local board has classified the registrant in any class other than Class I-O, the appeal board shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

"(b) Whenever a registrant's file is forwarded to the United States Attorney in accordance with paragraph (a) of this section, the Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant.

The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

"(c) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant the letter containing the recommendation of the Department of Justice."

Section 1626.26 of the Selective Service Regulations (32 C.F.R. § 1626.26 (1951 Rev.)) provides:

"Decision of appeal board.—(a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed forces to be disqualified for any military service because of physical or mental disability.

"(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; *provided*, that this shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 1625 of this chapter."

QUESTIONS PRESENTED

The basic question in this case is between "religious" conscientious objections and "non-religious" conscientious objections.

1. Is Section 6(j) of the Universal Military Training and Service Act (50 U.S.C. App. § 456 (j)), as amended by Congress in 1948, and in 1951 invalid, as in violation of the "Establishment of Religion" and "Free Exercise of Religion" clauses of the First Amendment of the United States Constitution and, also, of the "Due Process" clause of the Fifth Amendment thereof?

2. Whether, in granting an exemption from training and service in the armed forces of the United States to any person who is conscientiously opposed to participation in war in any form, Congress, constitutionally, could require, as a condition and in limitation of such exemption, that such person's conscientious objections must be based upon "religious" training and belief.

3. Whether it is mandatory for the government agency concerned (the Army) to follow its regulations at the Armed Forces Examining and Entrance Station, in the processing of a Selective Service System registrant present for the purpose of induction.

STATEMENT OF THE CASE

(1) Concerning the trial:

The indictment charged Welsh with a violation of the Universal Military Training and Service Act for refusing to submit to induction [CT 2].

Welsh pleaded "not guilty" and was tried by the Honorable Russell E. Smith, District Judge, sitting alone without a jury. He was found guilty and sentenced to imprisonment for a period of three years [CT 7].

A written Motion for Judgment of Acquittal was filed during the trial [CT 5 and RT 12, lines 11-20].[2]

(2) Concerning the agency processing:

In December, 1961, Welsh registered with the Selective Service System [E 4].[3]

On April 10, 1964, Welsh requested and was given a Special Form for Conscientious Objector, SSS Form 150 [E 16]. This form was executed and returned to the local board on April 24, 1964 [E 17]. He signed that portion of the Form 150 applicable to objectors to combatant training. He altered this statement by striking out the words "my religious training and" so that the statement read:

> "(A) I am, by reason of belief, conscientiously opposed to participation in war in any form. I therefore claim exemption from combatant training and service in the Armed Forces. /s/ Elliott A. Welsh, II" [E 17].

He answered the question, "Do you believe in a Supreme Being?" by putting an "X" in the box marked "no". He

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2. RT refers to the Reporter's Transcript.

3. "E" refers to government Exhibit 1, Welsh's Selective Service file.

attached a note explaining the nature of his beliefs [E 21 and 22].

On May 12, 1964, his local board granted him a classification of I-A-O [E 11, line 7 of Minutes of Action].

On May 25, 1964, he sent the local board a letter amending his Form 150 to request classification in Class I-O, claiming exemption from both combatant and non-combatant training and service [E 26] and requesting a personal appearance.

The local board hearing was held on June 9, 1964. The local board's resume of this "personal appearance" indicates its summary nature [E 29]. Welsh later testified that it took 30 to 45 seconds altogether [RT 18]. He mailed to the local board a letter which they received on June 19, 1964, strongly protesting their refusal to consider his reclassification claims [E 31 to 33].

An appeal was taken to the Appeal Board. The Department of Justice Hearing Officer, Mr. Owen J. Brady, interviewed Welsh on July 15, 1965. A copy of this Hearing Officer's full report was introduced into evidence at the trial as "Defendant's Exhibit 3" [RT 21, line 15], and is included with the Transcript of Record upon this appeal. The Hearing Officer concluded that Welsh was sincere in his conscientious objection to war but that he "could find no religious basis for the registrant's beliefs, opinions and convictions." [DE 7]. He recommended that petitioner's claim be denied both as to combatant and to non-combatant training and service.

The Department of Justice furnished the Appeal Board with a six page letter, containing excerpts from the Hearing Officer's report and stating the recommendation that Welsh be denied classification in either Classes I-O or I-A-O [E 39 through 44]. Full copies of the FBI report

on petitioner and of the Hearing Officer's full report on petitioner were not furnished to the Appeal Board [RT 27 and 28]. Neither were these reports furnished to Welsh although this had been requested by him [RT 22, line 6], until the trial, when the Hearing Officer's report alone was given to his counsel [RT 20, lines 22 and 23]. Thus Welsh did not have this data at the time he prepared his rebuttal to the Department of Justice recommendation, as provided by the regulations [E 60 through 67].

Welsh sent the Appeal Board an eight page letter explaining his belief in relation to the question of the existence of a "Supreme Being." The Appeal Board clerk told him that she would make a "summary" of this material and present it to the Appeal Board [RT 23, lines 15 to 22].

While this appeal was pending, his wife became pregnant. He conveyed this information to the clerk of the local board and was told "if we want any more information from you, we will send you a form." [RT 19, lines 11 to 17]. No Current Information Questionnaire was sent to petitioner [RT 20, lines 10 to 12]. The Appeal Board decision reclassifying Welsh I-A arrived two days later [RT 20, line 5] and the Order to Report for Induction came three days after that [RT 20, line 9].

Welsh reported to the Induction Station on December 5, 1965, as ordered [RT 23, line 23 et seq.]. His Form DD 98, the Armed Forces Security Questionnaire, had been executed over one year prior to the date of induction [E 87 through E 90], on April 30, 1964. He told the Induction Station personnel that he could not re-execute the DD Form 98, *as it had been made out the year before*, because some things had changed and his answers would be different [RT 24, lines 19, 20].

He was not given a new DD 98 to fill out but was taken to an upstairs room and given an opportunity to submit to induction [RT 24, line 12, to RT 25, line 12].

Welsh refused induction [RT 25, lines 19 to 22].

ARGUMENT

I

The Act of Congress Violates the First Amendment Prohibition of Establishment of Religion.

The First Amendment states Congress can "make no law respecting an establishment of religion, or prohibiting the free exercise thereof".

The Act of Congress, under which petitioner Welsh was processed, tried and convicted termed the Universal Military Training Service Act of 1951, at 50 U.S.C.A., App., 456 (j), so far as relevant provides:

> "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, *by reason of religious training and belief*, is conscientiously opposed to participation in war in any form. *Religious training and belief* in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. * * *" (Italics supplied).

It may be helpful to give the history of the pertinent parts of our recent draft laws:

The 1940 Act of Congress, Section 5(g) of the law termed the Selective Training and Service Act of 1940 (54 Stat. 885, 889), provided:

> "Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States, who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."

The 1948 Act, in Section 6(j) of the law termed the Selective Service Act of 1948 (62 Stat. 604, 612-3), which is identical with § 6(j) of said 1951 Act here under discussion, Congress substituted "armed forces" for "land or naval forces" in the above quotation from the 1940 Act, and added thereto the following amendment:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological or philosophical views or a merely personal moral code."

Our position is that the applicable statute, in its Section 6 (j), inherently, and as applied to deny petitioner Welsh an exemption, is violative of both the "Establishment Clause" and the "Free Exercise Clause" of the First Amendment.

As a first step in our argument we point out—

(1) Congress, by this amendment, restricted prior definitions and concepts of "religious training and belief" to only a "belief in a relation to a Supreme Being."

(2) This Court, by its decision in *United States* v. *Seeger*, 380 U.S. 163, 85 S.Ct. 850 (1965), in effect eliminated the necessity of belief in a Supreme Being and explicitly construed the beliefs of the men involved (Seeger, Jakobson, and Peter) to be within the intent of the Act.

It is now left for us to argue that if the beliefs of petitioner Welsh are not also to be construed as "religious" that the intent of Congress offends the First Amendment.

A. Welsh can be considered the possessor of "religious" beliefs.

Welsh disavowed belief in a Supreme Being [Ex. 17] and also "materially altered" the SSS Form No. 150 [the expression "materially altered" being the characterization of Seeger's conduct by the Second Circuit in *Seeger* v. *United States*, 2nd Cir., 1964, 326 F.2d 846].

Welsh struck out "my religious training and" so that the statement now read "(A) I am, by reason of belief, conscientiously opposed to participation in war in any form. I therefore claim exemption from combatant training and service in the Armed Forces. /s/ Elliott A. Welsh, II" [E 17].

He attached explanations of his beliefs [Ex. 21, 22].

Nevertheless, we pose this question: is a man to be judged solely by his own estimations?

The answer to this question must be no. Considerable weight is to be given to them but, just as in matters before this Court, all such issues are to be finally determined by constituted authority, not by interested parties.

Without cataloging, and arguing, the contents of the record, we submit that Welsh, like Seeger, et al., can be held to have a religious basis for his scruples. One writer on this subject, H. Patrick Sweeney, referring to *Torcaso* v. *Watkins*, 367 U.S. 488 (1961), says "The *Torcaso* opinion supports the view that belief in a system of ultimate moral values that bind the conscience is a form of religious belief within the meaning of the first amendment."*

*Loyola University Law Review, Vol. 1, p. 118 (1968).

This appears to essentially have been the conclusion of Circuit Judge Hamley, the writer of the dissenting opinion starts [1086]. He points out, too,

> "It is important to remember that the statute does not distinguish between externally and internally derived beliefs. *Seeger*, 380 U.S. at 186, 85 S.Ct. 850. Once it is determined that the basic belief does not derive exclusively from political, sociological or philosophical views, or a purely personal moral code, the source of the belief ceases to be a relevant subject of inquiry. The question then is only whether it is held with the requisite strength. Under *Seeger*, 380 U.S., at 176 and 184, 85 S.Ct. 850, it is held with the requisite strength if it occupies the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption." [1092].

B. Alternatively, Welsh need not be considered "religious" to prevail because the Act creates an impermissible distinction, in awarding statutory deferments, between sincere conscientious objectors who are non-religious and those who are "religious."

Welsh was found to be sincere by the Hearing Officer [Def. Ex. 3, RT 21, line 15]; no question has been raised as to his sincerity, and we believe none will be raised by the respondent.

Sincerity, alone, was the standard used by the British when they had conscription [See Appendix A]. Thus, a Welsh nationalist could be classified as a conscientious objector. This is the standard currently used by the Commonwealth of Australia [see Appendix B]. Its most pertinent paragraph says: "(5) For the purpose of this section, a conscientious belief is a conscientious belief whether the ground of the belief is or is not of a religious character and whether the belief is or is not part of the doctrines of a religion."

Similar provisions were present when draft laws existed in Canada, New Zealand, Germany (west), the Scandinavian countries and Holland and Finland.

Sincerity, alone, is the only constitutionally permissible standard. If it be asserted that Congress may proscribe beliefs (in our context) that are solely political, economic, sociological or philosophical we reply (1) there has been no claim that Welsh's beliefs were such, (2) that even if his pertinent beliefs are held to include such proscribed bases this would not taint his claim.

The Tenth Circuit so interpreted this Court's *Seeger* decision in *Fleming* v. *United States*, 10th Cir., 1965, 344 F.2d 912.

It is an impermissible preference to favor conscientious objectors who base their beliefs on religious grounds as against equally sincere beliefs held by men not claiming a religious basis for them.

C. Establishment cases.

The now long line of decisions by this Court, in "establishment" cases supports our view:

Torcaso v. *Watkins*, 367 U.S. 488 (1961)—

> "We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on belief in the existence of God as against those religions founded on different beliefs (11)" [495].
>
> "(11) Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism,

Ethical Culture, Secular Humanism and others. See *Washington Ethical Society* v. *District of Columbia*, 249 F.2d 127; *Fellowship of Humanity* v. *County of Alameda*, 153 C.A.2d 673, 315 P.2d 394; II Encyclopedia of the Social Sciences 293; 4 Encyclopedia Britannica (1957 ed.) 325-237; 21 id., 797; Archer, Faiths Men Live By (2d ed. revised by Purinton), 120-138, 254-313; 1961 World Almanac 695, 712; Year Book of American Churches for 1961, at 29, 47."

In *Torcaso*, a commission as a notary public was denied him because he would not declare his belief in God, as required under the State Constitution. This Court held that that State law violated the "Establishment Clause" of the First Amendment. The language quoted above from *Torcaso* was reiterated and reaffirmed in *Abington School District* v. *Schempp*, 374 U.S. 203, 220 (1963).

Earlier, this Court in several of its decisions preceding *Torcaso* took the same position and reaffirmed it in several subsequent decisions.

Everson v. *Board of Education*, 330 U.S. 1 (1947):

"The 'establishment of religion clause of the First Amendment means at least this: Neither a State nor the Federal Government can set up a church. Neither can pass laws which aid one religion, *aid all religions* or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. * * * In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State'." (Italics supplied).

In *Illinois ex rel. McCollum* v. *Board of Education*, 333 U.S. 203, 210-11 (1948) this Court was requested and

specifically refused to repudiate as *dicta* the above-quoted *Everson* interpretation of the scope of the First Amendment's coverage and reiterated the *Everson* statement as to the meaning of the establishment of religion clause. See, also *Zorach* v. *Clauson*, 343 U.S. 306, 312, 314-15 (1952), which followed the *McCollum* case. Said *Everson* statement was again reaffirmed in the *Torcaso* case, *supra*, in *McGowan* v. *Maryland*, 366 U.S. 420 (1961), in *Engel* v. *Vitale*, 370 U.S. 203 (1963). These principles are now "universally recognized", said this Court in *Schempp* (at page 220).

It is submitted that it is now but a short and reasonable step, after construing the First Amendment as prohibiting the preference of *one* religion over others to hold that it prohibits the preference of religious over non-religious persons in the bestowing of draft classifications. It is further submitted that the Court, in its past decisions, in effect took that short step when the alleged "dicta" in *Everson* was not repudiated in *McCollum*, but, on the contrary, was specifically reiterated.

D. Free exercise cases.

Cantwell v. *Connecticut*, 310 U.S. 296, 303-4 (1940), decided under the "Free Exercise Clause", says:

> "Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion."

We invite attention to the choice of words used: "Freedom of conscience. . . cannot be restricted by law."

Engel, *supra*, is of special interest:

> "The *Establishment Clause*, unlike the Free Exercise Clause does not depend upon any showing *of*

> *direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non-observing individuals or not.* This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs. * * * The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its 'unhallowed perversion' by a civil magistrate." (Italics added) (at pp. 430-432).

Schempp, supra, caused the Court to review again its prior decisions in this field; the above noted principles of law were reaffirmed. The Court not only reiterated the language from *Torcaso* (at pp. 221-2), but stated further, as follows:

> "In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule required interpretation of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment." (at p. 226).

We believe *Schempp*, in the above paragraph, stated our case:

"In the relationship between man and religion. . . ."

If it be thought that petitioner Welsh attacks religion, or is out of line with current "religious" thought, or disputes that in our society freedom of religion takes primacy among all the freedoms our nation cherishes quite the opposite is true.

The position of petitioner Welsh is mirrored by many of our great religions: freedom of thought.

More explicitly we quote from the Methodist position:

"c. Christians cannot complacently accept rights or privileges accorded to them because of their religious views but denied to others equally sincere who do not meet a religious test. So long as military conscription legislation remains in effect, we believe that all those who conscientiously object to participation in all wars should be granted recognition and assigned to appropriate civilian service regardless of whether they profess religious grounds as the basis of their stand."*

Also not present here is the political question of whether Congress must grant deferments or exemptions only, having decided that deferments and exemptions are desirable Congress may not favor "religious" over non-religious persons.

Nor is there present any problem of imperative necessity. The data published by the Selective Service System, in every issue of its monthly tabloid SELECTIVE SERVICE supports our conclusion. This publication shows the following: over 38,000,000 men have been registered since 1948; 33,000 have been classified I-O (completely deferred

*See Appendix C.

from *military* national service). A very much smaller number of men, professing conscientious objection, but who (for one reason or another not being so classified by the System) have gone to prison for refusal to submit to induction. This latter group were, in nearly all instances, men professing that they were religiously motivated. It is unreasonable, we submit, to believe that, at the most, more than an equal, additional number of other registrants would put their non-religious pacifist beliefs to the double test, that is, (1) risk prison and thereafter (2) shoulder the burdens of a conscientious objector in our society.

Nor is the test of sincerity more difficult to apply. If a local board doesn't like the demeanor of a registrant a negative answer to his application, after his meeting with the board, could completely demolish his case because it is almost entirely a subjective matter and a finding of insincerity would settle this point. Presently, when religious belief is the test, nearly all applicants have letters from "experts" (his minister, Sunday School teacher) that his beliefs are religious. The board never has counter-affidavits to support its adverse conclusion.

II

The Act Violates the Fifth Amendment Due Process Clause.

In its consideration of *Seeger* v. *United States*, 326 F.2d 846, the Second Circuit concluded that Congress had created an "impermissible classification," referring to the inclusion of the so-called "Supreme Being Clause" in the 1948 Act. The reasoning of this Court of Appeals is applicable to our situation.

> "We further recognize the concern for personal liberties and religious freedom which led to the enactment of the conscientious objector exemption in the face of the perils which confront us throughout the

world. At the same time, however, we cannot conclude that specific religious concepts, even if shared by the overwhelming majority of the country's organized religions, may be selected so as to discriminate against the holders of equally sincere religious beliefs Especially when considered in the light of *Torcaso* and the still more recent teachings of the Supreme Court . . ." [854].

"Equal protection under the law" is a time honored concept. It is part of the Fifth Amendment despite the fact this amendment contains no such explicit statement, as does the Fourteenth Amendment. *Bolling* v. *Sharpe* 347 U.S. 497, 499, 74 S.Ct. 693, 694 (1954):

> "But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The 'equal protection of the laws' is a more explicit safeguard of prohibited unfairness than 'due process of law,' and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process.[2]"

Footnote 2: *Detroit Bank* v. *United States*, 317 U.S. 329. 63 S.Ct. 297, 87 L.Ed. 304; *Currin* v. *Wallace*, 306 U.S. 1, 13-14, 59 S.Ct. 379, 386, 83 L.Ed. 441; *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 585, 57 S.Ct. 883, 890, 81 L.Ed. 1279.

Section 6 (j) of the Act (supra), making a conscientious objector classification one that must be based on religion marks an entrance by Congress into a field of legislation prohibited by the Constitution. Even if it is claimed to be a reasonable discrimination such an argument doesn't meet the constitutional test. Nor is the argument valid that the conscientious objector classification is a privilege granted by Congress and that it is not a right de-

rived from the Constitution. What privileges Congress gives must be given with a fair and equal hand.*

III

Offering the Loyalty Oath Is Mandatory.

The defendant was denied due process of law when the armed forces examining and entrance station ordered him to submit to induction without first giving him an opportunity to accomplish the security questionnaire, DD Form 98 as the regulations provide.

32 Code of Federal Regulations, Section 1632.16 provides:

> "1632.16 INDUCTION:—At the induction station the selected men who have been forwarded for induction *and found qualified* will be inducted into the Armed Forces." (Emphasis supplied).

Since there are no Selective Service System regulations on induction proceedings the Army regulations govern. *Chernekoff* v. *United States,* 9 Cir., 1955, 219 F.2d 721, 724, n. 12.

The pertinent Army regulation is:

> AR 601-270 "Personnel Procurement, Armed Forces Examining and Entrance Stations", provides in its pertinent part:
>
> "80. DD Form 98 (Armed Forces Security Questionnaire). A. Preparation: At the completion of the preinduction examinations all registrants, except registrants in Class I-O (conscientious objectors),

*Several law journal articles have questioned the constitutionality of Section 6 (j) not only because it discriminated between theistic and non-theistic conscientious objectors but, also, because it discriminates between religious and non-religious conscientious objectors, regardless of their sincerity and good faith. 50 Va.L.Rev. 178, 182-3; 64 Col.L.Rev. (No. 5), 938, 948, 950 (1964); 48 Minn.L.Rev. 770-71, 775-78 (1964); 82 Harv.L.Rev. 1680 (1969); 1 Loyola U.L.R. 113 (1968) etc., etc.

who are found to be militarily qualified for service in the Armed Forces, including administrative acceptees, will be given the opportunity to accomplish the Armed Forces Security Questionnaire. DD Form 98 will not be accomplished by registrants otherwise disqualified for induction, and processing under AR 604-10 will not be undertaken for registrants who are otherwise disqualified for induction.

(1) A commissioned officer who is thoroughly conversant with the regulations and policies pertaining to the accomplishment of the Armed Forces Security Questionnaire (DD Form 98) will be designated to have direct control over the procedures and will present the orientation established for completing the form.

(2) Volunteers for immediate induction and previously qualified registrants being processed for induction, who have not accomplished the security questionnaire, or whose security questionnaire is invalid, will be given the opportunity to accomplish the security questionnaire prior to induction.

(3) At the time registrants are given the opportunity to accomplish the security questionnaire, an orientation will be presented in a manner so as to insure all persons understand the importance of accomplishing the questionnaire. The orientation will consist of the informational material outlined in Appendix IV.

(4) Individuals who are about to accomplish DD Form 98 will be fully instructed as to the importance of the entries to be made in section IV and of affixing their signatures, and the reasons their cooperation in the accomplishment of the Armed Forces Security Questionnaire is an important step at the beginning of their military service.

(5) Each individual will be instructed and prepared to respond in accordance with his rights and understanding of the entries he is required to make. Coercion or persuasion will not be used.

(6) Following the orientation, each individual will be directed to carefully read the entire contents of the DD Form 98 and to answer all questions in section IV by writing 'Yes' or 'No' in the appropriate columns. All entries on the DD Form 98 will be in the individual's own handwriting except where use of typed entries is specified.

(7) Immediately following the completion of the DD Form 98, and affixing the signature by the declarant, a commissioned officer serving as the witnessing officer will affix his own signature. The practice of permitting DD Forms 98 to accumulate for later signature will be avoided. The witnessing officer may be any duly commissioned officer. It is not mandatory, however, it is preferable that he be an officer who is on duty with the induction station. Registrants will not be required to sign blank DD Forms 98 to be filled in at a later date by station personnel. This practice negates the value of DD Form 98 should the veracity of the statements therein be challenged. It also renders ineffective the penalty clause for falsification of the form.

(8) Security questionnaires are valid for a period of 120 days. If the time element between preinduction and induction is in excess of 120 days, the following statement will be placed in the Remarks Section of DD Form 98:

I have this date, ... reviewed the contents of DD Form 98 prepared by myself on ..... and certify that the statements then made by me are at this time full, true, and correct.

....

Signature of witnessing officer

Signature

The use of a rubber stamp and red ink is recommended for this requirement. An orientation in accordance with (3) above will be required for these individuals. An examinee who qualifies or refuses to accomplish this statement will be processed as for initial examinees of these categories.

b. Disposition.

(1) Security questionnaires which are satisfactorily accomplished by registrants will be forwarded to the appropriate Selective Service local board with other records which pertain to the individual, or, when applicable, to the military installation of initial reception.

(2) **A registrant who qualifies or refuses to accomplish the DD Form 98 in its entirety (see AR 604-10) or who discloses significant derogatory information with respect to his background, or invokes constitutional privileges, and registrants admitting current membership in the Communist party ('known Communists') and registrants for whom credible derogatory information has been received from a reliable source indicating Communist party membership ('alleged Communists') as defined in AR 604-10, will not be inducted into the Armed Forces pending completion of a thorough investigation** (Bold type supplied).

(3) Investigative action as prescribed in AR 604-10 will be initiated at the induction station in all cases of registrants referred to in (2) above.

(4) If a registrant refuses to complete part of a DD Form 98 he will be requested to enter an explanation of the refusal in the remarks section and to sign the form. A commissioned officer serving as the witnessessing officer will affix his own signature. If a registrant refuses to complete any part of a DD Form 98 and refuses to enter an explanation of the refusal in the remarks section

and sign the form, the following statement will be entered in the remarks section of the form:

> (Registrant's name), a registrant under the Universal Military Training and Service Act, was this date given an opportunity to execute DD Form 98 and in my presence he refused to do so.

This statement will be signed by a commissioned officer, and forwarded to the appropriate investigative agency in accordance with (3) above.

(5) DD Form 62 prepared for registrants referred to in (2) above will contain in remarks section the notation 'Acceptability for induction held in abeyance, not presently acceptable for induction.' No other notations will be made on the DD Form 62 and no other information or papers will be released to Selective Service local boards. Entries in regard to acceptability for induction will not be made.

(6) Item 22 on DD Form 47 pertaining to registrants referred to in (2) above will not be completed until the result of investigative action is received from higher headquarters.

(7) Entry on SSS Form 225 (Physical Examination List) for registrants for whom investigative action has been initiated in accordance with (3) above will indicate induction being held in abeyance. Same notation as required in (5) above will be entered.

(8) At the time final determination of the case under investigation has been made, the induction station concerned will be advised as to the appropriate action to be taken regarding the registrant whose induction is being held in abeyance. Upon receipt of information from higher headquarters indicating that registrants whose induction is being held in abeyance have been cleared for induction, the

induction station will prepare a new DD Form 62 in its entirety and forward it to the appropriate Selective Service local board. Upon receipt of information from higher headquarters indicating that registrants whose acceptability is being held in abeyance have been determined to be unacceptable for induction, the induction station will prepare a new DD Form 62 and forward it to the appropriate Selective Service local board. Original and copy of DD Form 62 prepared in accordance with (5) above, when retained, will be destroyed when the forms are accomplished."

The induction officials did not give this appellant the opportunity to qualify nor did they take any of the appropriate steps prescribed by the Army Regulation. Instead, they ordered him to submit to induction in violation of their own regulations in that they had not taken the required steps to determine if he was qualified for induction.

Note that the regulation is stated in mandatory language. See especially section B (2) set forth above. That section states that registrants in the position appellant was in on March 22, 1966, "will not be inducted".

A defendant in a draft refusal case ordinarily is required to show that he has exhausted all of his administrative remedies or he may not mount an attack on his classification as a defense in court. It is said he is required to exhaust his administrative remedies so that the courts will not be burdened with trials that might have been avoided by the defendant's success at some stage of the administrative process which would preclude his being ordered to submit to induction. The courts have often been rather rigid on this exhaustion point, requiring that the defendant go to the brink of induction, that he complete every step of the process prior to refusing actually to enter the military.

All of the arguments that support the requirement that the defendant exhaust the administrative process apply with equal vigor to the government. Shortcuts to induction taken by the government burden the courts with cases that could have been avoided altogether, to say nothing about the inconvenience and expense to the young men involved.

For this reason, as well as for the reason that deprival of a chance to avoid the dilemma is grossly unfair to the appellant, the government should be required to exhaust the administrative opportunities for rejection that the regulations provide before forcing the registrant to induction, refusal and trial.

Finally, we point out that the "fair and equal treatment" provisions of the law have been violated by the refusal to give Welsh the security questionnaire opportunity. Especially is this so in light of his explicit concern over signing it at the time of the induction proceeding. These "fair and equal treatment" provisions of the law are set forth in the regulations, as well as in the Act:

> "In classifying a registrant there shall be no discrimination for or against him because of his . . . . creed . . . or because of his membership or activity in any . . religious . . . organization. Each such registrant shall receive equal justice."

32 C.F.R. § 1622.1 (d).

CONCLUSION

This Court should hold (1) Welsh's beliefs fall within the meaning of the Act, or that (2) the Act, as applied to him, is unconstitutional or that (3) the Army erred

in applying the applicable security questionnaire procedures.

Respectfully,

J. B. TIETZ
257 S. Spring Street
Los Angeles, California 90012
Attorney for Petitioner

November 28, 1969.

APPENDIX A

THE ACTS
OF
THE PARLIAMENT
OF THE COMMONWEALTH
OF AUSTRALIA
PASSED DURING THE YEAR
1967
IN THE FIRST SESSION
OF THE TWENTY-SIXTH PARLIAMENT
OF THE COMMONWEALTH
WITH
TABLES, CERTAIN REPRINTED ACTS
AND INDEXES
IN TWO VOLUMES
VOLUME II

National Service Act 1951-1966

* * *

29A.—(1.) A person whose conscientious beliefs do not allow him to engage in any form of military service is, so long as he holds those beliefs, exempt from liability to render service under this Act.

(2.) A person whose conscientious beliefs do not allow him to engage in military duties of a combatant nature but allow him to engage in military duties of a non-combatant nature, shall not, so long as he holds those beliefs, be required to engage in duties of a combatant nature.

(3.) Sub-section (1.) of this section applies to a person who has commenced to render service under this Act only if that person formed the conscientious beliefs referred to in that sub-section after he commenced to render that service.

(4.) Sub-section (2.) of this section applies to a person who has commenced to render service under this Act only if—

(*a*) that person formed the conscientious beliefs referred to in that sub-section after he commenced to render that service; or

(*b*) before that person commenced to render that service, it had been decided that that person was a person to whom that sub-section applied.

(5.) For the purpose of this section, a conscientious belief is a conscientious belief whether the ground of the belief is or is not of a religious character and whether the belief is or is not part of the doctrines of a religion.

Exemption to be decided by a court of summary jurisdiction. Inserted by No. 30, 1953, s. 3.

29B.—(1.) Where a question arises whether—

(*a*) a person is, by virtue of sub-section (1.) of the last preceding section, exempt from liability to render service under this Act; or

(*b*) a person is a person to whom sub-section (2.) of that section applies,

the question shall be heard and decided by a court of summary jurisdiction of a State or Territory of the Commonwealth constituted by a Police, Stipendiary or Special Magistrate.

(2.) Where a question arises whether a person is, by virtue of sub-section (1.) of the last preceding section, exempt from liability to render service under this Act, the court by which the question is heard may, if it is satisfied that the person is not so exempt but that the person is a person to whom sub-section (2.) of that section applies, decide accordingly.

* * *

APPENDIX B

HALSBURY'S
STATUTES OF ENGLAND
SECOND EDITION
EDITOR-IN-CHIEF
SIR ROLAND BURROWS, K.C.
RECORDER OF CAMBRIDGE
VOLUME 22

ROYAL FORCES
SALE OF GOODS AND HIRE PURCHASE
SALE OF LAND
SAVINGS BANKS
SET OFF AND COUNTERCLAIM

LONDON
BUTTERWORTH & CO. (PUBLISHERS) LTD.
BELL YARD, TEMPLE BAR, W.C.2.
1950

National Service Act, 1948 (c. 64), s. 17

* *

Conscientious objectors

17. Registration in register of conscientious objectors.—(1) If any person subject to registration claims that he conscientiously objects—

(*a*) to being registered in the military service register, or

(*b*) to performing military service, or

(*c*) to performing combatant duties,

he may, on furnishing the prescribed particulars about himself, apply in the prescribed manner to be registered as a

conscientious objector in a special register to be kept by the Minister (in this Part of this Act referred to as "the register of conscientious objectors"):

Provided that where, in the case of a person who has been medically examined under section eight of this Act, such an application is made more than two days after the completion of his medical examination, the Minister shall dismiss the application unless he is satisfied, having regard to the grounds on which the application is made, that the making thereof has not been unreasonably delayed.

(2) Where any person applies in accordance with the last foregoing subsection to be registered in the register of conscientious objectors, he shall, unless his application is dismissed in accordance with the proviso to that subsection be provisionally registered in that register.

(3) A person who has been provisionally registered in the register of conscientious objectors shall within the prescribed period and in the prescribed manner, make to a local tribunal constituted under the Fourth Schedule to this Act an application stating to which of the matters mentioned in paragraphs (*a*) to (*c*) of subsection (1) of this section he conscientiously objects, and if he fails to do so the Minister shall remove his name from the register of conscientious objectors.

(4) An applicant for registration as a conscientious objector who is aggrieved by any order of a local tribunal and the Minister, if he considers it necessary, may, within the prescribed time and in the prescribed manner, appeal to the appellate tribunal constituted under the Fourth Schedule to this Act, and the decision of the appellate tribunal shall be final.

(5) The Minister or any person authorised by him shall be entitled to be heard on any application or appeal to a tribunal under this section.

(6) A local tribunal, if satisfied, upon an application duly made to it under this section, or the appellate tribunal if satisfied on appeal, that the ground upon which the application was made is established shall by order direct either—

(*a*) that the applicant shall without conditions be re-registered in the register of conscientious objectors; or

(*b*) that he shall be conditionally registered in that register until the end of a period of [eighteen months] and sixty days, the condition being that he must until the end of that period undertake work specified by the tribunal, of a civil character and under civilian control, and

(i) submit himself to such medical examination at such place and time as the Minister may direct for the purpose of ascertaining the applicant's fitness for that work;

(ii) undergo such training provided or approved by the Minister as the Minister may direct for the purpose of fitting the applicant for that work;

and that at the end of that period he shall be registered in that register without conditions; or

(*c*) that he shall be registered in that register as a person liable or prospectively liable under this Part of this Act to be called up for service but to be employed only in non-combatant duties;

but, if not so satisfied, shall by order direct that his name shall be removed from the register of conscientious objectors:

Provided that in relation to any person who, by reason of his age, has not yet become liable under this Part of this Act to be called up for service, any condition imposed

under paragraph (*b*) of this subsection shall be suspended until he attains the age of eighteen.

(7) The Minister may provisionally register in the register of conscientious objectors any person subject to registration, notwithstanding that he has refused or failed to make any application in that behalf, if in the Minister's opinion there are reasonable grounds for thinking that he is a conscientious objector, and the Minister may refer the case of that person to a local tribunal; and thereupon the provisions of this section shall have effect in relation to that person as if the necessary applications had been made by him, and references in this section to the "applicant" shall be deemed to include references to him.

(8) Any person unconditionally registered in the register of conscientious objectors by virtue of paragraph (*a*) of subsection (6) of this section or conditionally registered therein by virtue of paragraph (*b*) of that subsection shall not be liable to be called up for service so long as he is so registered.

(9) The Service Authorities shall make arrangements for securing that, where a person registered in the register of conscientious objectors by virtue of paragraph (*c*) of subsection (6) of this section as a person liable or prospectively liable under this Part of this Act to be called up for service but to be employed only in non-combatant duties is called up for service under this Part of this Act, he shall, during the period for which he serves by virtue of being so called up, be employed only in such duties.

(10) If, while a person is conditionally registered in the register of conscientious objectors, any change occurs in the particulars about him registered in that register, he shall forthwith notify the change to the Minister in the

prescribed manner, and if he fails to do so shall be liable on summary conviction to a fine not exceeding five pounds. [132]

NOTES

This section reproduces s. 5 (except for sub-s. (8)) of the National Service (Armed Forces) Act, 1939 (c. 81), as amended by the National Service Act, 1941 (c. 15), s. 6 (1), (3) and Schedule, the National Service Act, 1942 (c. 3), s. 1 (3) and Schedule, the National Service Act, 1947 (c. 31), s. 17 (1), (2) and Third Schedule.

The words in square brackets were substituted for "twelve months" by the National Service (Amendment) Act, 1948, (c. 6) s. 1 (2).

Definitions. For "Minister", "prescribed", "conditionally registered" and "Service Authorities", see s. 34 (1), p. 74, *post*.

Regulations under this section. National Service (Miscellaneous) Regulations, 1948, S.I. 1948 No. 2683, Part VII. For general provisions concerning regulations, see s. 32, p. 73, *post*.

Sub-s. (1).

Person subject to registration. For the construction of references to persons so subject, see ss. 6 (2), 10 (2), pp. 47, 53, *ante*.

Military service register. See s. 7 (4) (*a*), p. 48, *ante*.

Prescribed particulars; prescribed manner. See the National Service (Miscellaneous) Regulations, 1948, S.I. 1948 No. 2683, regs. 16, 17.

More than two days. *Semble*, for the purposes of the proviso to sub-s. (1), this means after the expiration of

two days exclusive of the day of medical examination; for computation of time, see generally 32 Halsbury's Laws (2nd Edn.) 142 *et seq.* S. 8 of this Act. See p. 49, *ante.*

Sub-s. (3), (4).

Prescribed period; prescribed manner etc. For form and time of applications to local tribunals and appeals, see the National Service (Miscellaneous) Regulations, 1948, S.I. 1948 No. 2683, reg. 18 and Schedule, Parts IX and X.

Local tribunal; appellate tribunal. For general provisions concerning the procedure of tribunals, see s. 22 (1), p. 64, *post,* and the National Service (Miscellaneous) Regulations, 1948, S.I. 1948 No. 2683, Part VIII. By s. 22 (2), p. 65, *post,* determinations of tribunals are not to be called in question in a court of law. For remuneration, allowances payable to members of tribunals, applicants and witnesses, see s. 22 (3), p. 65, *post.*

Fourth Schedule to this Act. See p. 106, *post.*

Sub-s. (6).

Certificate of registration. Where registration as a conscientious objector is granted, a certificate is issued in the form set out in Part VIII of the Schedule to the National Service (Miscellaneous) Regulations, 1948, S.I. 1948 No. 2683.

Removal from register. For power of a conscientious objector to apply for the removal of his name from the register of conscientious objectors or for registration as a person liable for service in non-combatant duties, see s. 18, p. 60, *post.*

Conditional registration. For consequences of breach of a condition of registration as a conscientious objector, see s. 19, p. 60, *post.* For remuneration of persons con-

ducting medical examinations under sub-s. (6) (*b*) (i) and allowances to persons undergoing training under sub-s. (6) (*b*) (11), see s: 22 (3) (*d*), (*c*), respectively, p. 65, *post.*

If a period shorter than eighteen months is appointed under the proviso to s. 1 (2), p. 42, *ante,* as the term of whole-time service, the reference to "eighteen months" in sub-s. (6) (*b*) of this section is to be construed as a reference to that shorter period; see the National Service (Amendment) Act, 1948 (c. 6), s. 1 (3), p. 109, *post.*

Registration for non-combatant duties. It was held in *Eversfield* v. *Story,* [1942] 1 K.B. 437; [1942] 1 All E.R. 268; 2nd Digest Supp. that where a person registered for non-combatant duties persistently refused medical examination under enactments now replaced by s. 8, p. 49, *ante,* he ought to be punished and not dealt with by probation.

Until he attains the age of eighteen. For the construction of references to attaining a particular age, see s. 34 (3), p. 75, *post.*

Sub-s. (10).

Prescribed manner. For the form applicable for notification of change of particulars, see the National Service (Miscellaneous) Regulations, 1948, S.I. 1948 No. 2683, reg. 16 (e) and Schedule, Part VIII.

Summary conviction. For general provisions concerning offences, see s. 31, p. 71, *post.* For application of the Summary Jurisdiction Acts, see generally the Summary Jurisdiction Act, 1879 (c. 49), s. 51, title Magistrates, Vol. 14, p. 884.

18. Changes in register of conscientious objectors.—(1) A registered conscientious objector may at any time apply to the Minister in the prescribed manner either—

(*a*) for the removal of his name from the register of conscientious objectors and for his registration in the military service register as a person liable or prospectively liable under this Part of this Act to be called up for service; or

(*b*) for his registration in the register of conscientious objectors as a person liable or prospectively liable as aforesaid, but to be employed only in non-combatant duties.

(2) A person registered in the register of conscientious objectors as a person liable or prospectively liable under this Part of this Act to be called up for service but to be employed only in non-combatant duties, may, at any time before the day specified in an enlistment notice served upon him as the day on which he is thereby required to present himself, apply to the Minister in the prescribed manner for the removal of his name from that register and for his registration in the military service register as a person liable or prospectively liable under this Part of this Act to be called up for service.

(3) The Service Authorities shall make arrangements for enabling a person registered in the register of conscientious objectors as a person liable to be called up for service under this Part of this Act, but to be employed only in non-combatant duties, to apply to the Minister, at any time on or after the day mentioned in the last foregoing subsection, for the removal of his name from that register and for his registration in the military service register as a person liable to be called up for service under this Part of this Act; and where such an application is granted, the applicant may be employed in combatant duties.

(4) Where an application made under this section is granted, the Minister shall cause the register or registers to be amended accordingly.

NOTES

This section reproduces s. 7 of the National Service Act, 1941 (c. 15), as amended by the National Service Act, 1942 (c. 3), s. 1 (3) and Schedule.

Register of conscientious objectors. See s. 17 (1), p. 57, *ante*.

Prescribed. *I.e.*, by regulations (s. 34 (1), p. 74, *post*). See the National Service (Miscellaneous) Regulations, 1948, S.I. 1948 No. 2683, reg. 19 and Schedule, Part XIV, for form of application under this section.

Military service register. See s. 7 (4), p. 48, *ante*.

Liable to be called up. See s. 1 (1), p. 42, *ante*, as to liability to be called up.

Non-combatant duties. For provision for the registration of persons in the register of conscientious objectors as liable for service but to be employed only in non-combatant duties, see s. 17 (6), p. 58, *ante*. For duty of Service Authorities to secure that persons so registered are employed only in such duties, see sub-s. (9) of that section.

Enlistment notice. See s. 9, p. 51, *ante*, and as to service, s. 33, p. 74, *post*.

Definitions. For "registered conscientious objector", "Minister", "prescribed" and "Service Authorites", see s. 34 (1) p. 74, *post*.

Regulations under this section. National Service (Miscellaneous) Regulations, 1948, S.I. 1948 No. 2683; see reg. 19. For general provisions concerning regulations, see s. 32, p. 73, *post*.

19. Breach of condition of registration as conscientious objector.—(1) Where it appears to the Minister that a conditionally registered conscientious objector has failed to comply with any condition on which he is registered, but had reasonable excuse for the failure, the Minister may refer his case to a local tribunal.

(2) Where it appears to the Minister that a conditionally registered conscientious objector has, at any time after the expiration of one month after the condition relating to his undertaking work has been imposed on him, failed to undertake the work specified by the tribunal or ceased to undertake it, the Minister may direct him to undertake any work so specified until the end of the period during which he is so registered or the direction is withdrawn.

(3) On any reference of the case of any person to a local tribunal under subsection (1) of this section, the tribunal, if it is satisfied that he has failed to comply with the condition but had reasonable excuse for the failure, shall report to the Minister accordingly and either—

(*a*) make no order in the matter; or

(*b*) order that the person whose case has been referred shall be registered without conditions in the register of conscientious objectors; or

(*c*) order that the condition on which he was registered shall be varied, or that another condition shall be substituted therefor,

and any order made under paragraph (*b*) or (*c*) of this subsection shall have effect notwithstanding any previous order made by a local or appellate tribunal.

(4) Where the case of any person has been referred to a local tribunal under subsection (1) of this section—

(*a*) that person, if he is aggrieved by the order of the tribunal or by its failure to make an order or report to the Minister; or

(*b*) the Minister, if he considers it necessary;

may within the prescribed time and in the prescribed manner appeal to the appellate tribunal, and the decision of the appellate tribunal shall be final.

(5) If a person conditionally registered as a conscientious objector fails to comply with any condition on which he is registered or any direction given to him by the Minister under subsection (2) of this section, he shall, unless he satisfies the court that he had reasonable excuse for the failure, be guilty of an offence under this Part of this Act and liable—

(*a*) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine not exceeding one hundred pounds, or to both such imprisonment and such fine; or

(*b*) on summary conviction, to imprisonment for a term not exceeding twelve months, or to a fine not exceeding fifty pounds, or to both such imprisonment and such fine.

(6) A prosecution against any person under the last foregoing subsection for failing to comply with a condition or direction shall not be instituted except by or with the consent of the Minister; and where the case of any person has been referred to a local tribunal under subsection (1) of this section, the Minister shall not institute or consent to the institution of such a prosecution against him—

(*a*) unless that tribunal has determined the matter and made no report that he had reasonable excuse for the failure and the time for appealing from that determination has expired; or,

(*b*) where an appeal has been brought from the determination of the local tribunal, unless the appellate tribunal has determined the matter and made no such report as aforesaid.

7. On the prosecution of any person for such an offence, a certificate purporting to be signed on behalf of the Minister and stating—

(*a*) that he has not referred the case of that person to a local tribunal under subsection (i) of this section; or

(*b*) that he has so referred the case and either—

(i) that the local tribunal has determined the matter and made no such report as aforesaid and that the time for appealing from the determination has expired; or

(ii) that an appeal has been brought from the determination of the local tribunal and that the appellate tribunal has determined the matter and made no such report; or

(*c*) that he has directed a person to undertake any work and has not withdrawn that direction,

shall be conclusive evidence of the facts so stated. [134]

NOTES

This section reproduces s. 5 of the National Service Act, 1941 (c. 15), as amended by the National Service Act, 1947 (c. 31), s. 17 (1) and Third Schedule.

Regulations under this section. National Service (Miscellaneous) Regulations, 1948, S.I. 1948 No. 2683, reg. 18 (2) and Schedule, Part XI. For general provisions concerning regulations, see s. 32, p. 73, *post*.

Sub-s. (1).

Minister. *I.e.*, the Minister of Labour and National Service; see s. 34 (1), p. 74, *post*.

Conditionally registered conscientious objector. For definitions of "registered conscientious objector" and "conditionally registered", see s. 34 (1), p. 74, *post*, by which "conditionally registered", in relation to a conscientious objector, means a person for the time being conditionally registered in the register of conscientious objectors by virtue of an order made, or having effect under, s. 17 (6) (*b*), p. 58, *ante*, or made under sub-s. (3) (*c*) of this section, s. 20 (2), p. 63, *post*, or s. 21 (4), p. 64, *post*.

On a prosecution for an offence under this Part of this Act, the fact that the defendant is or was a conscientious objector registered on a particular condition may be evidenced by a certificate purporting to be signed on behalf of the Minister of Labour and National Service; see s. 31 (6) (*a*), p. 72, *post*.

Reasonable excuse. See note to sub-s. (5), *infra*.

Local tribunal. By s. 34 (1), p. 74, *post*, this means a local tribunal constituted under the Fourth Schedule, p. 106, *post*; see also s. 22, p. 64, *post*, for general provisions concerning tribunals.

Sub-s. (2).

Directions to undertake work. Power to direct conditionally registered conscientious objectors to undertake work specified by a local tribunal was formerly exercised under reg. 58A of the Defence (General) Regulations, 1939, S.R. & O. 1939 No. 927, as amended (which confers general power to control employment and is temporarily continued in effect by S.R. & O. 1945 No. 1620 made under the Supplies and Services (Transitional Powers) Act, 1945 (c. 10), title War and Emergency, Vol. 26). Sub-s. (2) of the present section corresponds to

sub-s. (1a) inserted in s. 5 (repealed) of the National Service Act, 1941 (c. 15), by the National Service Act, 1947 (c. 31), s. 17 (1) and Third Schedule.

Sub-s. (3).

Register of conscientious objectors. See s. 17 (1), p. 57, *ante*.

Without conditions etc. Cf. s. 17 (6), p. 58, *ante*.

Appellate tribunal. By s. 34 (1), p. 74, *post*, this means the appellate tribunal constituted under the Fourth Schedule, p. 106, *post*; see also s. 22, p. 64, *post*.

Sub-s. (4).

Prescribed time; prescribed manner. *I.e.*, "prescribed" by regulations (s. 34 (1), p. 74, *post*). See the National Service (Miscellaneous) Regulations, 1948, S.I. 1948 No. 2683, reg. 18 (2) and Schedule, Part XI.

Sub-s. (5).

Offences. For general provisions concerning offences, see s. 31, p. 71, *post*.

Reasonable excuse. This means reasonable excuse for disobedience as a conscientious objector; on failure of a conscientious objector to comply with a condition or direction, the court cannot inquire whether the person brought before it was ever liable to be registered under this Act at all (*Emery* v. *Sage*, [1943] 1 All E.R. 509; 2nd Digest Supp.). Cf. also, for the meaning of "reasonable excuse", the Territorial and Reserve Forces Act, 1907 (c. 9), s. 20 (1), *post* (Part 3), where the expression "sickness or other reasonable excuse" is employed, and the cases cited in 4 Words and Phrases 486 *et seq*.

Summary conviction. For the general application of the Summary Jurisdiction Acts, see the Summary Juris-

diction Act, 1879 (c. 49), s. 51, title Magistrates, Vol. 14, p. 884.

Sub-s. (7).

Evidence by certificate. Cf. s. 31 (6) (*a*), p. 72, *post*, by which the fact that the defendant is or was a conditionally registered conscientious objector may be evidenced by certificate.

20. Provision as to certain persons sentenced for failure to attend medical examination.—

* * *

(4) Where the appellate tribunal recommend under this section that a person be discharged from whole-time service, the tribunal shall have power to make any order with respect to his registration as a conscientious objector which they would have had power to make on an appeal under section seventeen of this Act, and any such order shall have effect immediately upon his discharge.

APPENDIX C

Only the Uniting Conference and subsequent General Conferences may speak with authority for United Methodism. Passed by the 1968 Uniting Conference, these resolutions serve to guide the thought and action of United Methodists for the years of work and service that lie ahead.

THE UNITED METHODIST CHURCH AND PEACE

The Christian Church must stand for the principle of unconditional love as manifested in the life and service of its Lord. The power of such love to transform persons, groups, and relationships is a testimony to the practical realism of the Christian gospel.

Christians and the Church must seek to express God's love through the incorporation of universal values in the policies of nations and the programs of international organizations.

We call attention to the unique opportunities of the church as an instrument of peace, and to the special responsibilities which these opportunities imply.

a. The church can be objective, since it represents no particular nation, social class, economic theory, or political party.

b. The church can be a means of communication, since it includes people of many nations and groups.

c. The church can be a means of reconciliation and unity, since it holds forth a supreme loyalty greater than the lesser causes for which men fight.

d. The church has, in the proclamations of the prophets, the standards of social righteousness without which peace is not secure.

e. The church has, in the witness of Christ, the key to achieving needed change without violence.

f. The church can hear and share the Spirit of the Eternal, in which contemporary passions may be seen in true perspective

1. Sovereignty

We remind the people and the leaders of all countries that no nation is ultimately sovereign. All nations and people are under the judgment of God. Scripture reminds us that in the eyes of God the welfare of the human race is more precious than the continued existence of any nation.

* * *

7. The Individual and Military Training and Service

a. We affirm the opposition of The Methodist Church to compulsory military training and service in peacetime. Efforts should be made to include the universal abolition of military conscription in any disarmament agreement the nations may reach so that all men and nations may be free from its harmful influence.

b. Regarding the duty of the individual Christian, opinions sincerely differ. Faced by the dilemma of participation in military service he must decide prayerfully before God what is to be his course of action in relation thereto. What the Christian citizen may not do is to obey men rather than God, or overlook the degree of compromise in our best acts, or gloss over the sinfulness of war. The church must hold within its fellowship persons who sincerely differ at this point of critical decision, call all to repentance, mediate to all God's mercy, minister to all in Christ's name.

We believe it is our obligation to render every assistance to the individual who conscientiously objects to service in the military forces. He should receive counsel concerning his rights in this respect, assistance in bringing his claim before the proper authorities, and support in securing recognition thereof.

Thousands of our sons and daughters have, with sincere Christian conscience, responded to the call for service in the military forces. We are obligated to provide preinduction counseling and educational material prepared by the appropriate agencies of the church. We believe particular emphasis should be directed to the serviceman's bearing a good witness for Christ, the church and the nation.

c. Christians cannot complacently accept rights or privileges accorded to them because of their religious views but denied to others equally sincere who do not meet a religious test. So long as military conscription legislation remains in effect, we believe that all those who conscientiously object to participation in all wars should be granted recognition and assigned to appropriate civilian service, regardless of whether they profess religious grounds as the basis of their stand.

[Bold Type Supplied]

8. World Trade and Economic Development.

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